UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,918	06/29/2001	Brian Jacoby	06975-203001/Security 14	5947

26171   7590   04/01/2009
FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER
BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
2443	

NOTIFICATION DATE	DELIVERY MODE
04/01/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte BRIAN JACOBY and CHRISTOPHER J. WRIGHT

_____

Appeal 2008-4795
Application 09/894,918
Technology Center 2100

_____

Decided:[1] March 30, 2009

_____

Before HOWARD B. BLANKENSHIP, JAY P. LUCAS, and
THU A. DANG, *Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

_____

[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date
shown on this page of the decision. The time period does not run from the
Mail Date (paper delivery) or Notification Date (electronic delivery).

I. STATEMENT OF THE CASE

Appellants appeal from the Examiner's final rejection of claims 1, 3-7, 11, 12, 16, 17, 19, 20, 22-26, 28, 30, 31, 35, 36, 38, 39, 41-45, 47, 49, 50, 54, 55, 57-62, 64, and 67-73 under 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b)(2002). An Oral Hearing regarding this appeal was conducted on March 18, 2009.

A. INVENTION

According to Appellants, the invention relates to securing an accessible computer system (Spec. 1, 1. 13).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1.   A method for securing an accessible computer system, the method comprising:

receiving more than one data packet at a network device, each data packet including a payload portion and an attribute portion and being communicated between at least one access requestor and at least one access provider through the network device;

monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers to at least one of the access requestors by scanning the payload portion for at least one predetermined pattern and counting a number of data packets having payload portions that include the predetermined pattern; and

using the network device to deny communication of subsequent data packets from the access requestor to the access provider when a number of payload portions of the data packets received from the access provider to the access requestor are deemed to include the predetermined pattern exceed a configurable threshold number.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Alcendor	US 6,337,899 B1	Jan. 8, 2002
Maher	US 6,654,373 B1	Nov. 25, 2003
Eichstaedt	US 6,662,230 B1	Dec. 9, 2003
Cox	US 6,738,814 B1	May 18, 2004

Claims 1, 3-7, 11, 12, 16, 17, 19, 20, 22-26, 28, 30, 31, 35, 36, 38, 39, 41-45, 47, 49, 50, 54, 55, 57-62, 64, and 67-73 stand rejected under 35 U.S.C. § 103(a) over the teachings of Cox in view of Eichstaedt, Maher, and Alcendor.

We REVERSE.

II. ISSUE

Have Appellants shown that the Examiner erred in finding that the combination of Cox in view of Eichstaedt, Maher, and Alcendor teaches or would have suggested the steps of "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers to at least one of the access requestors" and "using the

3

network device to deny communication of subsequent data packets from the access requestor to the access provider" (Claim 1)?

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Cox

1. Cox discloses analyzing an incoming data packet from the public network, wherein the incoming data packet is matched against known patterns where the known patterns are associated with known forms of attack on the private network (col. 1, ll. 62-67).

2. When a packet from attacker 16 reaches routing device 12, an attack blocking component will notice that the address matches one that exists within private network 12 and the attack blocking component can deny access to private network 12 (col. 2, ll. 8-15; Fig. 1)

3. The routing device 10 can be enabled to intelligently analyze incoming packets, match the packets against known patterns for attack strategies and respond accordingly to malicious packets (col. 3, ll. 26-29; Fig. 1).

Alcendor

4.   Alcendor discloses controlling subscription services delivered to a

      user by an Internet Service Provider (ISP) coupled to an Automated

      Intelligent Network (AIN) telephone system (Abstract).

IV. PRINCIPLES OF LAW

35 U.S.C. § 103

"[T]he PTO gives claims their 'broadest reasonable interpretation.'"
In re Bigio, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211
F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read
into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181,
1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir.
1989)). Our reviewing court has repeatedly warned against confining the
claims to specific embodiments described in the specification. *Phillips v.
AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

      One cannot show nonobviousness by attacking references individually
where the rejections are based on combinations of references. *In re Merck
& Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

      In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the
Examiner to establish a factual basis to support the legal conclusion of
doing, the Examiner must make the factual determinations set forth in
Graham v. John Deere Co., 383 U.S. 1, 17 (1966). "[T]he examiner bears
the initial burden, on review of the prior art or on any other ground, of

presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the Examiner's burden is met, the burden then shifts to the Appellant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See id.*

V. ANALYSIS
35 U.S.C. § 103(a)

Initially, Appellants argue that "Cox never monitors data packets from Access Provider Y" but instead "monitors solely data packets from the Access Requestor" (Supp. App. Br. 5). However, Cox does not disclose any such "Access Provider Y" or "Access Requestor" as argued by Appellants, which are merely terms disclosed in Appellants' Supplemental Appeal Brief and Reply Brief. We will not read "Access Provider Y" and "Access Requestor" or any such function attributed to the "Access Provider Y" and "Access Requestor" by Appellants as the teaching of Cox.

We begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio,* 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the Specification. *See In re Van Geuns,* 988 F.2d at 1184. It is the Appellants' burden to precisely define the invention. *See In re Morris* 127 F.3d 1048, 1056 (Fed. Cir. 1997).

Appellants' claims simply do not place any limitation on what the claimed term "access provider" is to be, to represent, or to mean, other than that data packets are directed from at least one of the access providers.

As for the argument "Cox does not disclose any such 'Access Provider Y," Appellants appear to be arguing that Cox does not disclose "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers to at least one of the access requestors" (claim 1). However, such label "access providers" is not functionally related to the claimed method. Such "access providers" feature does not change the functionality of or provide an additional function to the claimed method, but rather, is merely a label set forth for the source of the data packets. Such label will not distinguish the invention from the prior art in terms of patentability.

Cox discloses a routing device for analyzing incoming data packets by matching the packets against known patterns where the known patterns are associated with known forms of attack on the private network (FF 1 and 3), wherein an attack blocking component can deny access to a private network based on the matching results (FF 2). We find an artisan would have understood the routing device of Cox to be a network device for receiving more than one data packet and monitoring the at least the payload portion of the data packets by scanning for at least one predetermined pattern, wherein the network device is used to deny communication of subsequent data packets, as recited in claim 1. Furthermore, as discussed above, the claimed

term "access providers" is merely a label set forth to define the source of the data packets, and we find that Cox discloses a source for the data packets.

Alcendor discloses controlling subscription services delivered to a user by a provider (FF 4). We find an artisan would have understood the subscription services of Alcendor to be access providers, and also would have understood the controlling of subscription services of Alcendor to be monitoring data packets directed from at least one of the access providers to at least one of the access requestors, as recited in claim 1.

Though Appellants argue that "Alcendor lacks the use of an intermediary network device" and that "Alcendor does not disclose anything that relates to data packets" (Supp. App. Br. 6), Appellants appear to be arguing that Alcendor alone fails to disclose or suggest the claim limitations. However, the Examiner has rejected the claims based on the combination of Cox in view of Eichstaedt, Maher, and Alcendor, and nonobviousness cannot be shown by attacking the references individually. *See In re Merck*, 800 F.2d at 1097. As discussed above, Cox discloses a routing device, ie., an intermediary network device, for analyzing incoming data packets (FF 1 and 3).

Appellants also contend that "not any one of the four references, Cox, Eichstaedt, Maher and Alcendor, nor any possible combination of these references, discloses or suggests the feature of <u>denying subsequent data packets from access requestors based on the results of monitoring the payload portion of the data packets directed from access providers</u>, as

8

claimed" (Supp. App. Br. 4). The Examiner finds that the claimed feature
"is taught by Cox, Eichstaedt, Maher and Alcendor combined" (Ans. 13). In
particular, the Examiner finds that Cox "discloses denying subsequent data
packets from access requestors based on the result of monitoring the payload
portion of the data packets . . . 'the routing device can implement methods of
blocking denial of service attacks . . . .'" (*id.*). Accordingly, we address on
this appeal whether the combination of Cox in view of Eichstaedt, Maher,
and Alcendor teaches or would have suggested the steps of "monitoring, at
the network device, at least the payload portion of the data packets directed
from at least one of the access providers to at least one of the access
requestors" and "using the network device to deny communication of
subsequent data packets from the access requestor to the access provider"
(claim 1).

 After reviewing the record on appeal, we agree with Appellants.
While the combination of Cox in view of Eichstaedt, Maher, and Alcendor
teaches and strongly suggests a network device for receiving more than one
data packet and monitoring the at least the payload portion of the data
packets by scanning for at least one predetermined pattern, wherein the
network device is used to deny communication of subsequent data packets
(FF 1-3), wherein the monitored data packets are directed from at least one
of the access providers to at least one of the access requestors (FF 4), we
agree with the Appellants that there is no denying of subsequent data packets
from access requestors based on the results of monitoring the payload

portion of the data packets directed from access providers, as required by claim 1. That is, though such claimed terms "access requestors" and "access providers" are merely labels that will not distinguish the invention from the prior art in terms of patentability, the combined teachings do not disclose or suggest monitoring the payload portion of the data packets directed from a first source (access providers) to deny communication of subsequent data packets from a second separate source (access requestor), as required by claim 1. As admitted by the Examiner, Cox discloses monitoring the services from the attacker (the first source) for "blocking denial of service attacks" from the attacker (the same first source) (Ans. 13).

We also find that Eichstaedt and Maher do not cure the deficiencies of Cox and Alcendor. That is, we find the combination of Cox in view of Eichstaedt, Maher, and Alcendor does not teach or suggest the steps of "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers to at least one of the access requestors" and "using the network device to deny communication of subsequent data packets from the access requestor to the access provider" (claim 1). Thus, we agree with Appellants that claim 1 would not be obvious over Cox in view of Eichstaedt, Maher, and Alcendor.

As such, we will reverse the rejection of representative claim 1 and claims 3-7, 11, 12, 16, 17, 19, 20, 22-26, 28, 30, 31, 35, 36, 38, 39, 41-45, 47, 49, 50, 54, 55, 57-62, 64, and 67-73 standing therewith over Cox in view of Eichstaedt, Maher, and Alcendor. We thus conclude that Appellants have

10

shown that the Examiner erred in rejecting claims 1, 3-7, 11, 12, 16, 17, 19, 20, 22-26, 28, 30, 31, 35, 36, 38, 39, 41-45, 47, 49, 50, 54, 55, 57-62, 64, and 67-73 under 35 U.S.C. § 103(a) for the reasons as set forth above.

VI. CONCLUSIONS OF LAW

Appellant has shown that the Examiner erred in finding claims 1, 3-7, 11, 12, 16, 17, 19, 20, 22-26, 28, 30, 31, 35, 36, 38, 39, 41-45, 47, 49, 50, 54, 55, 57-62, 64, and 67-73 unpatentable under 35 U.S.C. § 103(a) over the teachings of Cox in view of Eichstaedt, Maher, and Alcendor.

VII. DECISION

We have not sustained the Examiner's rejection with respect to any claim on appeal. Therefore, the Examiner's decision rejecting claim 1, 3-7, 11, 12, 16, 17, 19, 20, 22-26, 28, 30, 31, 35, 36, 38, 39, 41-45, 47, 49, 50, 54, 55, 57-62, 64, and 67-73 is reversed.

REVERSED

msc

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022